



## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

[Docket No. 21-16]

#### William C. Gardner, D.D.S.; Decision and Order

On May 11, 2021, the Acting Administrator, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause and Immediate Suspension of Registration (hereinafter, OSC) to William C. Gardner, D.D.S. (hereinafter, Respondent) of Albuquerque, New Mexico. OSC, at 1. The OSC informed Respondent of the immediate suspension of Respondent's Certificate of Registration No. BG9826427, because Respondent's continued registration constitutes "an imminent danger to the public health or safety." *Id.* (citing 21 U.S.C. § 824(d)). The OSC also proposed the revocation of Respondent's DEA registration pursuant to 21 U.S.C. § 824(a)(3), because Respondent has "no state authority to handle controlled substances."<sup>1</sup> *Id.*

Specifically, the OSC alleged that the New Mexico Board of Dental Health Care (hereinafter, Board) issued a Decision and Order on November 26, 2019. *Id.* at 2. According to the OSC, this Decision and Order revoked Respondent's New Mexico dental license following the Board's findings, *inter alia*, that Respondent submitted false claim forms to an insurance provider to obtain payment for an unnecessary dental procedure, falsified a radiography (x-ray), and failed to cooperate with the Board's investigation. *Id.* Respondent appealed and obtained a stay of the Board's Decision and Order, but the appeal was dismissed, the stay was lifted, and the

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<sup>1</sup> The OSC also proposed the revocation of Respondent's DEA registration pursuant to 21 U.S.C. § 824(a)(4) because "[Respondent's] continued registration is inconsistent with the public interest." *Id.* However, in its Submission of Evidence and Motion for Summary Disposition (hereinafter, Motion for Summary Disposition), the Government requested that the motion be granted based on the lack of state authority allegation and stated that if its motion was granted, "the Government would not intend to continue with [the] proceedings regarding the allegations that Respondent's continued DEA registration would be inconsistent with the public interest." Motion for Summary Disposition, at 1 and 7. On July 19, 2021, the Administrative Law Judge assigned to this case issued an Order Granting the Government's Motion for Summary Disposition, and Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge (hereinafter, RD) that granted the Government's Motion for Summary Disposition. RD, at 10. Accordingly, I will not consider the Government's public interest allegations and will only consider the record as is relevant to the lack of state authority allegation.

Board's Decision and Order was enforced as of July 17, 2020. *Id.* Additionally, Respondent's New Mexico controlled substances license expired by its terms on September 30, 2020. *Id.* According to the OSC, on December 12, 2020, the Board issued a Decision and Default Order confirming the revocation of Respondent's dental license.

The OSC notified Respondent of the right to request a hearing on the allegations or to submit a written statement, while waiving the right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. *Id.* at 6 (citing 21 C.F.R. § 1301.43). By letter dated May 27, 2021, Respondent timely requested a hearing.<sup>2</sup> Hearing Request, at 1. The Hearing Request asserted that Respondent's New Mexico dental license was not revoked as of July 17, 2020. *Id.* The Hearing Request also asserted that the grounds recited for the alleged revocation of Respondent's New Mexico dental license were false, that the alleged lifting of the stay was solely the result of egregious errors by Respondent's prior counsel, that the alleged order lifting the stay was not a final order, and that the December 12, 2020 order<sup>3</sup> confirming the revocation of Respondent's dental license had been vacated. *Id.* at 2.

The Office of Administrative Law Judges put the matter on the docket and assigned it to Administrative Law Judge Teresa A. Wallbaum (hereinafter, ALJ), who issued a Briefing Schedule on June 3, 2021, directing the parties to brief the Government's allegation that Respondent currently lacks authority to handle controlled substances in New Mexico. RD, at 2. The Government timely complied with the Briefing Schedule by filing its Motion for Summary Disposition on June 17, 2021. *Id.* The Government requested that the ALJ grant its Motion for Summary Disposition and recommend revocation of Respondent's DEA registration, because Respondent's New Mexico dental license was revoked, Respondent's New Mexico controlled substances license had expired, and thus, Respondent lacks authority to handle controlled

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<sup>2</sup> The Hearing Request was filed on May 28, 2021. Order Directing the Filing of Government Evidence Regarding its Lack of State Authority Allegation and Briefing Schedule (hereinafter, Briefing Schedule), at 1. I find that the Government's service of the OSC was adequate and that the Hearing Request was timely filed on May 28, 2021.

<sup>3</sup> The Hearing Request refers to "Order in Case No.18-32-COM."

substances in New Mexico, the state in which he is registered with the DEA. Motion for Summary Disposition, at 7.

After the ALJ granted Respondent an extension of time, Respondent filed an Objection to Government's Submission of Evidence and Motion for Summary Disposition (hereinafter, Respondent's Objection) on July 12, 2021. RD, at 2. Respondent's Objection argued that "[a]lthough the Board has attempted to revoke [Respondent's] license twice, in each case that revocation is not yet effective." Respondent's Objection, at 5. Specifically, Respondent's Objection asserted that the first Board order revoking Respondent's dental license on November 26, 2019,<sup>4</sup> was not yet final and was still subject to "two appeals and a motion to stay at the New Mexico Court of Appeals." *Id.* Respondent's Objection also asserted that the second Board order confirming Respondent's revocation on December 12, 2020,<sup>5</sup> "[had] been vacated and [would] not be the subject of an evidentiary hearing until at least September 1, 2021." *Id.*

On July 16, 2021, the Government filed a Reply in Support of Motion for Summary Disposition (hereinafter, Government's Reply). The Government's Reply argued that because New Mexico requires both a state professional license and a state controlled substances license for authorization to handle controlled substances, and because Respondent's controlled substances license had expired, which Respondent has not disputed, Respondent lacks authority to handle controlled substances in New Mexico, regardless of the status of his dental license. Government's Reply, at 1. Additionally, the Government's Reply argued that Respondent's argument that his dental license had not yet been revoked was factually erroneous based on the factual findings of an order issued by the New Mexico First Judicial District Court denying Respondent's request for a preliminary injunction against the December 12, 2020 Board order. *Id.* at 2. Moreover, the Government's Reply argued that Respondent's argument that his dental license had not yet been revoked was also legally erroneous because, although he had sought a

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<sup>4</sup> Respondent's Objection refers to "[t]he Case 18-61 revocation."

<sup>5</sup> Respondent's Objection refers to "[t]he Case 18-32 revocation."

stay of the Board's first November 26, 2019 order, he had yet to actually obtain the stay. *Id.* Finally, the Government's Reply argued that even if Respondent's dental license had not yet been revoked, Respondent's agreement to not practice dentistry as a condition of release in his criminal cases, and therefore to not prescribe or administer controlled substances without a dental license, on its own sufficiently constitutes a lack of state authority to handle controlled substances. *Id.* at 2-3.

On July 19, 2021, the ALJ granted the Government's Motion for Summary Disposition and recommended that Respondent's DEA registration be revoked, finding that "[t]here is no genuine issue of material fact in this case" and that "[t]he Government has established that Respondent currently lacks both a dental license and the authority to handle controlled substances." RD, at 7 and 10. Specifically, the ALJ highlighted that Respondent failed to address or refute that his New Mexico controlled substances license had expired and found that "Respondent's arguments regarding his dental license are nothing more than an impermissible effort to relitigate the state revocation proceedings." *Id.* at 8. The ALJ concluded that "the fact that Respondent may get his registration back, whether through an appeal or otherwise, does not change the answer to the sole inquiry in this case: whether he is *currently* authorized to handle controlled substances in New Mexico." *Id.* at 9.

By letter dated August 13, 2021, the ALJ certified and transmitted the record to me for final Agency action. In that letter, the ALJ advised that neither party filed exceptions. I issue this Decision and Order based on the entire record before me. 21 C.F.R. § 1301.43(e). I make the following findings of fact.

## **FINDINGS OF FACT**

### **Respondent's DEA Registration**

Respondent is the holder of DEA Certificate of Registration No. BG9826427 at the registered address of 8200 Carmel Ave. NE Suite 101, Albuquerque, NM 87122. Government Motion Exhibit (hereinafter, GX) A (DEA Certificate of Registration). Pursuant to this

registration, Respondent is authorized to dispense controlled substances in schedules II through V as a practitioner. *Id.* Respondent's registration expires on September 30, 2021. *Id.*

### **The Status of Respondent's State License**

On November 26, 2019, the Board issued a Decision and Order that revoked Respondent's dental license, effective January 1, 2020, after finding that Respondent "submitted false claim forms to [an insurance provider] for the purpose of obtaining payment for an unnecessary dental procedure . . . falsified a [sic] x-ray/radiograph . . . [and] failed to cooperate with the Board investigation." GX B, at 5-6. On December 19, 2019, the New Mexico County of Santa Fe First Judicial District Court (hereinafter, the Court) stayed the Board's November 26, 2019 Order. GX E. On July 7, 2020, the Court issued an order, following a hearing on June 15, 2020, that dismissed Respondent's appellate case, lifted the December 19<sup>th</sup> stay, and ordered that the Board could enforce its Decision and Order starting on July 17, 2020. GX F, at 1-3.

On December 12, 2020, the Board issued a Decision and Default Order that again revoked Respondent's dental license, as well as ordered that "this revocation of Respondent's license does not affect, modify, or change the earlier revocation of Respondent's license on July 17, 2020." GX H, at 3. On January 20, 2021, Respondent filed an Application for a Temporary Restraining Order and Preliminary Injunction in which he requested a restraining order against the execution of the December 12, 2020 Board Decision, as well as an injunction regarding the enforcement of the Decision, which the Court denied on February 19, 2021. GX L, at 4-5; GX N, at 2-3 (the Court reasoned in part that Respondent's "license to practice dentistry is currently revoked based on decisions made in a separate and unrelated case").

On February 4, 2021, the Second Judicial Court for Bernalillo County in a criminal matter involving Respondent issued a Stipulated Order Amending Conditions of Release ordering that Respondent "shall not practice dentistry without a license from the [Board]." GX Q. On April 30, 2021, in a separate criminal matter involving Respondent, the Second Judicial

Court for Bernalillo County issued an Order Setting Conditions of Release again ordering that Respondent was not to practice dentistry without a license. GX S, at 1-2.<sup>6</sup>

On April 26, 2021, the Board issued an order that set aside its December 12, 2020 Decision but also ordered that “Respondent’s dental license remains revoked” as of July 17, 2020. GX I, at 4. On April 26, 2021, the Board also issued a Notice of Contemplated Action against Respondent alleging that Respondent was practicing dentistry without a license and not cooperating with the Board’s investigations. GX J, at 4 and 8. On May 21, 2021, the Board issued a Notice of Hearing regarding the allegations in the April 26, 2021 Notice of Contemplated Action. GX J, at 1. On June 1, 2021, Respondent filed an appeal of the denial of his motion to reconsider the Court’s July 7, 2020 order and various other appeals. GX G, at 1-2; GX O, at 1-2; GX U, at 1.

It remains uncontested that Respondent’s New Mexico controlled substances license is expired. *See* GX W.

According to New Mexico’s online records, of which I take official notice, Respondent’s New Mexico dental license remains revoked.<sup>7</sup> New Mexico Regulation & Licensing Department Licensee Search and Verification, <https://www.rld.nm.gov/about-us/public-information-hub/online-services> (last visited date of signature of this Order). Further, New Mexico’s online records, of which I take official notice, show that Respondent’s New Mexico controlled substance license remains expired.<sup>8</sup> *Id.* (last visited date of signature of this Order).

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<sup>6</sup> I agree with the ALJ that it is unnecessary to rely on the conditions of Respondent’s release as a basis for a finding that Respondent lacks state authority to handle controlled substances. *See* RD n.3.

<sup>7</sup> Under the Administrative Procedure Act, an agency “may take official notice of facts at any stage in a proceeding – even in the final decision.” United States Department of Justice, Attorney General’s Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. § 556(e), “[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.” Accordingly, Respondent may dispute my finding by filing a properly supported motion for reconsideration of findings of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by e-mail to the other party and to Office of the Administrator, Drug Enforcement Administration at [dea.addo.attorneys@dea.usdoj.gov](mailto:dea.addo.attorneys@dea.usdoj.gov).

<sup>8</sup> *See supra* n.7 regarding official notice.

Accordingly, I find that Respondent is not currently licensed to engage in the practice of dentistry or to handle controlled substances in New Mexico, the state in which Respondent is registered with DEA.

## **DISCUSSION**

Pursuant to 21 U.S.C. § 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the Controlled Substances Act (hereinafter, CSA) “upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.” With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner’s registration. *See, e.g., James L. Hooper, M.D.*, 76 Fed. Reg. 71,371 (2011), *pet. for rev. denied*, 481 F. App’x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 Fed. Reg. 27,616, 27,617 (1978).

This rule derives from the text of two provisions of the CSA. First, Congress defined the term “practitioner” to mean “a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.” 21 U.S.C. § 802(21). Second, in setting the requirements for obtaining a practitioner’s registration, Congress directed that “[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.” 21 U.S.C. § 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner’s registration is the appropriate sanction whenever he

is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper*, 76 Fed. Reg. at 71,371-72; *Sheran Arden Yeates, M.D.*, 71 Fed. Reg. 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.*, 58 Fed. Reg. 51,104, 51,105 (1993); *Bobby Watts, M.D.*, 53 Fed. Reg. 11,919, 11,920 (1988); *Frederick Marsh Blanton*, 43 Fed. Reg. at 27,617.

Moreover, because “the controlling question” in a proceeding brought under 21 U.S.C. § 824(a)(3) is whether the holder of a practitioner’s registration “is currently authorized to handle controlled substances in the [S]tate,” *Hooper*, 76 Fed. Reg. at 71,371 (quoting *Anne Lazar Thorn*, 62 Fed. Reg. 12,847, 12,848 (1997)), the Agency has also long held that revocation is warranted even where a practitioner is still challenging the underlying action. *Bourne Pharmacy*, 72 Fed. Reg. 18,273, 18,274 (2007); *Wingfield Drugs*, 52 Fed. Reg. 27,070, 27,071 (1987). Thus, it is of no consequence that the action is being appealed. What is consequential is my finding that Respondent is no longer currently authorized to dispense controlled substances in New Mexico, the state in which he is registered.

According to New Mexico statute, “A person who manufactures, distributes or dispenses a controlled substance or who proposes to engage in the manufacture, distribution or dispensing of a controlled substance shall obtain a registration issued by the board in accordance with its regulations.” N.M. Stat. Ann. § 30-31-12(A) (West, current through the end of the First Regular Session and First Special Session, 55th Legislature (2021)). In turn, “dispense” means “to deliver a controlled substance to an ultimate user or research subject pursuant to the lawful order of a practitioner, including the administering, prescribing, packaging, labeling or compounding necessary to prepare the controlled substance for that delivery.” *Id.* at § 30-31-2(H). Further, a “practitioner” means “a physician . . . dentist . . . or other person licensed or certified to prescribe and administer drugs that are subject to the Controlled Substances Act.” *Id.* at § 30-31-2(P).

Here, the undisputed evidence in the record is that Respondent’s New Mexico controlled substance license is expired; therefore, he cannot dispense controlled substances in New Mexico.



Further, Respondent's New Mexico dental license has been revoked. As such, he is not a "practitioner" licensed or certified to prescribe and administer a controlled substance under New Mexico law. Thus, because Respondent lacks authority to handle controlled substances in New Mexico, Respondent is not eligible to maintain a DEA registration. Accordingly, I will order that Respondent's DEA registration be revoked.

## **ORDER**

Pursuant to 28 C.F.R. § 0.100(b) and the authority vested in me by 21 U.S.C. § 824(a), I hereby revoke DEA Certificate of Registration No. BG9826427 issued to William C. Gardner, D.D.S. Further, pursuant to 28 C.F.R. § 0.100(b) and the authority vested in me by 21 U.S.C. § 823(f), I hereby deny any pending application of William C. Gardner to renew or modify this registration, as well as any other pending application of William C. Gardner, D.D.S. for additional registration in New Mexico. This Order is effective [insert Date Thirty Days From the Date of Publication in the Federal Register].

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Anne Milgram,  
Administrator.

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